

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	CRIMINAL NO. SA-19-CR-106-DAE
)	
BENJAMIN JOOST BOGARD,)	
)	
Defendant.)	

**UNITED STATES OF AMERICA’S
MOTION FOR PRELIMINARY ORDER OF FORFEITURE**

Comes now the United States of America, by and through the United States Attorney for the Western District of Texas and the undersigned Assistant United States Attorney and files this Motion for Preliminary Order of Forfeiture, pursuant to the provisions of Title 21 U.S.C. §§ 853(n)(1)-(7), and Fed. R. Crim. P. 32.2(b)(2), 32.2(b)(2)(B), and 32.2(c)(1), and in support thereof states the following:

I.

On May 1, 2019, Defendant BENJAMIN JOOST BOGARD entered an oral guilty plea to Count One of the Amended Superseding Information (Doc. 41) filed against him, charging him with the violations of Title 18 U.S.C. §§ 1466A(b)(1) and (d)(4). The Amended Superseding Information (Doc. 41) also included a Notice of Demand for Forfeiture pursuant to Title 18 U.S.C. §§ 1467(a)(1) and (3), in which the United States gave notice of its intent to forfeit certain properties, namely:

- 1. Any and all online accounts used by the defendant; and**
- 2. Huawei P20 Lite ANE-LX3 cellular telephone bearing serial number KPSDU18425000143,**

hereinafter referred to as the Subject Personal Properties.

As part of his guilty plea, Defendant BENJAMIN JOOST BOGARD agreed to immediately and voluntarily forfeit all his right, title, and interest in the Subject Personal Properties.

II.

The United States of America moves the Court to find that Defendant BENJAMIN JOOST BOGARD has an interest in the Subject Personal Properties and that the United States of America has proven by a preponderance of the evidence the nexus between the Subject Personal Properties and the violations of Title 18 U.S.C. §§ 1466A(b)(1) and (d)(4), by virtue of the Defendant BENJAMIN JOOST BOGARD's oral guilty plea and the factual basis recited into the record.

III.

Accordingly, the United States of America moves this Honorable Court for entry of a Preliminary Order of Forfeiture, which forfeits all right, title, and interest of Defendant BENJAMIN JOOST BOGARD in the Subject Personal Properties.

IV.

The United States moves the Court, pursuant to Title 21 U.S.C. § 853(g) and Fed. R. Crim. P. 32.2(b)(3), for an Order authorizing the United States through its lawfully designated agents and agencies, including the Federal Bureau of Investigation, to seize, take custody, control and possession of the Subject Personal Properties whether held by Defendant BENJAMIN JOOST BOGARD or a third party.

V.

The United States further moves the Court, pursuant to Fed. R. Crim. P. 32.2(b)(6)(A) and (C) and Title 21 U.S.C. § 853(n)(1), for an Order authorizing the United States to cause publication

for at least 30 consecutive days on an official government internet web site (www.forfeiture.gov) of notice of the Preliminary Order of Forfeiture, and of its intent to dispose of the Subject Personal Properties in such manner as the United States directs.

The United States of America further moves this Court for an Order authorizing that the contents of the published notice be in compliance with Fed. R. Crim. P. 32.2(b)(6)(B).

VI.

The United States further moves the Court, pursuant to Fed. R. Crim. P. 32.2(b)(6), for an Order authorizing the United States to send direct notice of the Preliminary Order of Forfeiture to any person or entity who reasonably appears to the United States to be a potential petitioner with standing to contest the forfeiture in the ancillary proceeding.

The United States of America further moves this Honorable Court that Appendix A¹ be served on potential petitioners along with the Preliminary Order of Forfeiture.

VII.

Pursuant to Fed. R. Crim. P. 32.2(c)(1)(B) and in an effort to promote judicial economy, the United States further moves the Court for an Order authorizing the United States to commence discovery proceedings at the time that any petitions are filed in order to resolve any third-party issues, including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas, pursuant to Fed. R. Civ. P. 45.

VIII.

Lastly, the United States moves the Court, pursuant to Fed. R. Crim. P. 32.2(b)(4)(B), to order that at the time of the sentencing of Defendant BENJAMIN JOOST BOGARD, the forfeiture

¹Appendix A, which is entitled “Direct Notice of Preliminary Order of Forfeiture,” sets forth the appropriate procedures, deadlines and applicable statutes necessary to file a third-party petition.

of the Subject Personal Properties be included in his Judgment in a Criminal Case.

WHEREFORE, PREMISES CONSIDERED, the United States of America moves this Honorable Court for entry of a Preliminary Order of Forfeiture.

Respectfully submitted,

JOHN F. BASH
United States Attorney

By: /s/
ANTONIO FRANCO, JR.
Assistant United States Attorney
Asset Forfeiture Section
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216
Tel: (210) 384-7040
Fax: (210) 384-7045
Texas Bar No. 00784077
Email: Antonio.Franco@usdjo.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2019, the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System which will transmit notification of such filing to the following CM/ECF participant:

Michael J. Morris
Morris & Bermudez, PLLC
299 W. San Antonio Street
New Braunfels, TX 78130
Email: mmorris@mmbiblaw.com
(Attorney for Defendant BENJAMIN JOOST BOGARD)

_____/s/
ANTONIO FRANCO, JR.
Assistant United States Attorney

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
V.)	CRIMINAL NO. SA-19-CR-106-DAE
)	
BENJAMIN JOOST BOGARD,)	
)	
Defendant.)	

DIRECT NOTICE OF PRELIMINARY ORDER OF FORFEITURE

Notice is hereby given that in the case of *U.S. v. BENJAMIN JOOST BOGARD* Criminal No. SA-19-CR-106-DAE, the United States District Court for the Western District of Texas entered a Preliminary Order of Forfeiture condemning and forfeiting the following property to the United States of America:

1. Any and all online accounts used by the defendant; and
2. Huawei P20 Lite ANE-LX3 cellular telephone bearing serial number KPSDU18425000143.

The United States hereby gives notice of its intent to dispose of the forfeited property in such manner as the United States Attorney General may direct. Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States must file a petition within 30 days of the final publication of notice or his receipt of notice, whichever is earlier pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure and Title 21 U.S.C. §§ 853(n)(1)-(3). The petition must be filed with the Clerk of the Court, 655 E. Cesar E. Chavez, Room G-65, San Antonio, Texas 78206, and a copy served upon Assistant United States Attorney Antonio Franco, Jr., 601 N.W. Loop 410, Suite 600, San Antonio, Texas 78216.

The petition must comply with the requirements of Title 21 U.S.C. § 853(n).

If you fail to file a petition to assert your interest in the above-described property within the time prescribed above, your interest in this property will be lost and forfeited to the United States, which will then have clear title to the property and will dispose of the property in accordance with the law.

APPENDIX A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

UNITED STATES OF AMERICA,)	
Plaintiff,)	
)	
V.)	CRIMINAL NO. SA-19-CR-106-DAE
)	
BENJAMIN JOOST BOGARD,)	
Defendant.)	

PRELIMINARY ORDER OF FORFEITURE

Came on to be considered the United States of America's Motion for Preliminary Order of Forfeiture, pursuant to the provisions of Title 21 U.S.C. §§ 853(n)(1)-(7), and Fed. R. Crim. P. 32.2(b)(2), 32.2(b)(2)(B), and 32.2(c)(1), and this Court being fully and wholly apprised in all its premises, finds that the United States has established by a preponderance of the evidence a nexus between the below described property and the violations of Title 18 U.S.C. §§ 1466A(b)(1) and (d)(4), by virtue of Defendant BENJAMIN JOOST BOGARD's oral guilty plea agreement with the factual basis recited into the record, and that the Defendant has an interest in said properties. As such, said Motion is meritorious, and hereby is in all things GRANTED. IT IS THEREFORE

ORDERED that all right, title, and interest of Defendant BENJAMIN JOOST BOGARD in certain properties, namely:

- 1. Any and all online accounts used by the defendant; and**
- 2. Huawei P20 Lite ANE-LX3 cellular telephone bearing serial number KPSDU18425000143,**

hereinafter referred to as the Subject Personal Properties be, and hereby is, FORFEITED to the United States of America; and IT IS FURTHER

ORDERED that upon entry of the Preliminary Order of Forfeiture, the United States through its lawfully designated agents and agencies, including the Federal Bureau of Investigation,

shall seize, take custody, control, and possession of the Subject Personal Properties whether held by the defendant or a third party; and IT IS FURTHER

ORDERED that the United States shall cause publication for at least 30 consecutive days on an official government internet website (www.forfeiture.gov) of the notice of the Preliminary Order of Forfeiture and of its intent to dispose of the Subject Personal Properties in such manner as the United States directs. The United States must send notice to any person or entity who reasonably appears to be a potential petitioner with standing to contest the forfeiture in the ancillary proceeding; and IT IS FURTHER

ORDERED that the United States shall send Direct Notice of the Preliminary Order of Forfeiture, Appendix A, which is attached to the United States of America's Motion for Preliminary Order of Forfeiture, and incorporated herein to those known to the United States to have an interest in the Subject Personal Properties; and IT IS FURTHER

ORDERED that in the event a third-party petition is filed as to the Subject Personal Properties the United States shall commence discovery proceedings to resolve any third-party issues, including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas, pursuant to Fed. R. Civ. P. 45; and IT IS FURTHER

ORDERED that at the time of the sentencing of Defendant BENJAMIN JOOST BOGARD, the forfeiture of the Subject Personal Properties shall be included in his Judgment in a Criminal Case.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2019.

DAVID A. EZRA
Senior United States District Judge